

PHED COMMITTEE #2  
October 3, 2005

**MEMORANDUM**

September 28, 2005

TO: Planning, Housing, and Economic Development Committee

FROM: Marlene Michaelson, Senior Legislative Analyst  
Sally Roman, Council Consultant

SUBJECT: Oversight Session on Developmental Approval Issues – Moderately Priced Dwelling Units and Other Issues

In early September, Committee Chair Silverman announced that the Planning, Housing, and Economic Development Committee will conduct biweekly oversight sessions through the fall on actions Park and Planning takes to identify and improve implementation and enforcement of approved residential projects throughout Montgomery County. This is the second of those biweekly Committee Oversight sessions.

The following representatives from Park and Planning, the Department of Housing and Community Affairs (DHCA), and the Department of Permitting Services (DPS) are expected to brief the Committee:

Derick Berlage, Planning Board Chairman  
Charles Loehr, Director, Department of Park and Planning  
William Mooney, Deputy Director, Department of Park and Planning  
Rose Krasnow, Chief, Development Review Division, Department of Park and Planning  
Sharon Suarez, Housing Coordinator, Department of Park and Planning  
Elizabeth Davison, Director, Department of Housing and Community Affairs  
Joe Giloley, Chief, Housing and Code Enforcement Division  
Chris Anderson, Manager, Single-family Programs  
Reginald Jetter, Chief, Division of Casework Management, DPS

**I. Moderately Priced Dwelling Unit Program -- Development Staging**

The purpose of this discussion is to understand how the development process relates to the Moderately Price Dwelling Unit (MPDU) program. The Department of

Park and Planning (see © 1-3), the Department of Housing and Community Affairs (DHCA), and the Department of Permitting Services (DPS) (see © 4-5) provided information about their respective roles in the MPDU development process.

The major topics for discussion are:

- Which agency determines how many MPDUs will be built and where they will be located?
- Which agency determines the phasing of MPDU construction?
- Which agency(s) enforce these decisions?
- How are modifications to a subdivision that affect the MPDUs handled?

The departments report that decisions about the number and locations of MPDUs are determined during the site plan process at Park and Planning. If no site plan is required, the number of MPDUs is determined during preliminary plan review. Site plans are required in almost all instances. When they are not, units in the subdivision, including MPDUs, are usually all of one type – all single-family detached or all apartments.

In the past, it was the responsibility of the applicant to take the approved development plan to DHCA so that an MPDU Agreement to Build could be reached. The departments recently agreed that Park and Planning will transmit approved development plans to DHCA for this purpose, and DHCA will contact the developer. For examples of MPDU Agreements, see © 6-20. The phasing plans are on © 11 and © 18.

Enforcement has been the joint responsibility of Park and Planning and DPS, both of which sign off on building permits. DHCA verified that units were being built when developers came in to arrange to offer their units. In the future, the agencies have agreed that the developers will be required to submit a monthly report of MPDUs and market rate units built and that DPS will also issue a monthly report.

Finally, the departments agreed that Park and Planning will notify DHCA of any changes to development plans in projects with MPDUs. DHCA will see that any necessary modifications are made to the MPDU Agreement to Build. The Agreement will be attached to the first building permit application in a subdivision and the developer must certify that the Agreement has been executed as they apply for additional permits.

## **II. MPDU Follow-up Issues**

As part of the September 19<sup>th</sup> discussion of MPDU regulation 13 - 05AM, the PHED Committee requested additional information about a number of subjects related to the MPDU program. The Committee asked for a more detailed description of the lottery system used to allocate new MPDUs and the priority point system that determines an applicant's eligibility for inclusion in a lottery. Members asked particularly about the length of time households typically remain on the waiting list for an MPDU. The Committee also asked for further information on the distribution of MPDU household

incomes. DHCA has provided this information for Committee consideration (see © 21-23).

DHCA reports that the lottery system is generally well accepted and easy to administer. The Department's records show that as of June 30, 2005 all applicants with five points had been selected for, at least, one lottery. An applicant with five points is one who lives and works in Montgomery County and has been on the waiting list at least three years. Drawings later in the summer included applicants with four points and even those with three in some cases.

The Department also provided a table showing the distribution of incomes among households that purchased MPDUs in 2003 and 2004. The table shows that almost half of these households had incomes between \$31,000 and \$40,000. Ninety-five percent had incomes less than \$45,000. The Committee asked this question to better understand both the minimum income standard and the increase in the eligibility standard for MPDU buyers in 2005 from 65 percent of median to 70 percent of median household income. The results show that a wide range of households within the MPDU standards are being served. They also show that the Department has permitted households with incomes below the minimum standard to purchase MPDUs when the financial resources were available.

### **III. Additional Developmental Approval Oversight Issues**

The most recent Biweekly Report is attached on © 24-31.

At the first biweekly oversight session on September 19, the Committee did not have time to discuss the **status of MNCPPC and DPS review of site plans approved throughout the County in the last two years**. Planning staff will update the Committee on this item. The chart on © 30-31 provides a listing of approved site plans that have been inspected.

Committee members also asked for written information on a number of items. The information requests are summarized below. The Planning Department has provided information for this packet for most of the requested information and will provide information on the remaining requests in the future.

#### **Committee Information Requests:**

1. The current timetable for Planning Board consideration of Clarksburg Town Center violations and alleged violations. **The Planning Board will hold violation hearings on October 6 and October 25, and a sanction/plan of compliance hearing on November 3.** When the staff report is prepared for those meetings, a copy should be sent to Committee members, including information on the number of units covered in the various proceedings.

2. Copy of the stop work order for Clarksburg Town Center with information on what work is and is not allowed to proceed. See © 32.
3. Criteria for determination of what constitutes a minor versus major site plan amendment. See © 33.
4. Copies of new procedures as they are codified. For example, which document will contain the ruling by the Commission's counsel that where there is any discrepancy between a site plan opinion and signature set document, that the signature set is the controlling document? See © 34-40 for the Planning Board's Rules of Procedure.
5. A description of the scope and timeframe for the Request for Proposal for consultant assistance to review and make recommendations regarding the development review and enforcement processes at the Department of Park and Planning. See © 41-46 for a summary of the Scope of Services and Evaluation Criteria.
6. The Department's organizational chart, including staff members responsible for the different Clarksburg issues.

September 15, 2005

**MEMORANDUM**

**TO:** Peggy Fitzgerald-Bare, Confidential Aide

**FROM:** Charles R. Loehr, Director 

**SUBJECT:** PHED Committee MPDU Questions

The following is in response to the questions in your August 8 email.

- 1.) Which government agency determines the number of MPDUs required in a given subdivision

The Planning Board, as part of its approval of a preliminary plan on site plan, determines the required number of MPDUs.

- 2.) Which government agency determines any phasing requirements for MPDUs? Is there a requirement in law related to phasing, and if not, what policies dictate any phasing requirements? Are phasing requirements identified on a site plan? How is a phasing requirement enforced? How are any requests to amend a phasing requirement handled?

The Department of Housing and Community Affairs determines phasing requirements for MPDUs. Chapter 25A states that no building permit is to be issued for any unit in a development requiring MPDUs until an Agreement to Build has been executed between the developer and DHCA. A required part of the Agreement is a construction schedule that is intended to ensure that MPDUs will be started at the same time or before the market rate units are built. The relevant sections of Chapter 25A are as follows:

**"Sec. 25A-5. Requirement to build MPDUs; agreements**

\*\*\*

(b) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

- (1) a specific number of MPDUs must be constructed on an approved time schedule;
- (2) in single-family dwelling unit subdivisions, each MPDU must have 3 or more bedrooms; and
- (3) in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

\*\*\*

(h) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(i) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

- (1) MPDUs are built along with or before other dwelling units;
- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) The pace of MPDU production must reasonably coincide with the construction of market rate units; and the last building built must not contain only MPDUs.

(j) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built."

\*\*\*

The phasing requirements for MPDUs are not identified on the site plan because the negotiation of the MPDU agreement with DHCA does not occur until after the site plan is approved by the Planning Board. As identified above, the phasing requirement is to be enforced by the Department of Permitting Services. DHCA would handle any request to amend a phasing requirement.

3.) What government agency, if any, approves the location of MPDUs? Are locations (and number of MPDU) identified on a site plan? If they are identified on a site plan, who inspects and enforces their location and at what point in time in the development process?

The location and number of MPDUs are identified on the site plan approved by the Planning Board. The locations are enforced through enforcement of the phasing plan by DPS and DHC. The MPDU agreement requires the applicant to provide a copy of the final contract of sale or lease agreement for each MPDU to the County.

4.) What requirements govern number of parking spaces required or permitted for MPDUs? I seem to recall that, at least for some unit types, there is a lesser parking requirement for MPDUs. Who determines number of required parking spaces for MPDU. Who enforces?

The only unique MPDU parking provisions apply to high-rise multi-family zones near transit. In the R-10, R-H, TSM, TSR and CBD zones the parking requirement for MPDUs is one-half the number of spaces normally required by the zoning ordinance. M-NCPPC enforces the number of parking spaces for projects in site plan zones.



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan  
County Executive

Elizabeth B. Davison  
Director

September 29, 2005

TO: Sally Roman, County Council Consultant  
FROM: Elizabeth B. Davison, Director  
Department of Housing and Community Affairs  
Robert C. Hubbard, Director RCH by Elizabeth Davison  
Department of Permitting Services  
SUBJECT: Responses to MPDU Staging Questions

Below please find the responses to the questions you asked in your email of September 22, 2005 regarding the staging of MPDUs and MPDU agreements. We describe the process as it existed in the past, as well as new processes we have implemented recently.

**DHCA's Role:**

DHCA works with the developer and Park and Planning documents to develop the MPDU agreement. This agreement confirms the number and location of MPDUs and determines the precise staging of MPDU construction.

Previously: Unless an alternative agreement is sought, the Agreement to Build is a standard document with only three unique pieces of information per development: the total number of units approved, the number of MPDUs required, and a construction schedule that reflects the staging plan. The developer completes the Agreement to Build and submits it to DHCA to be executed by the Director.

New Process: The agreement will be modified to reflect the following additional information: the approved site plan number to allow easier tracking through the three agencies; the street addresses and tax identification numbers of each market rate unit and MPDU to allow easier tracking in the automated building permit system; and a requirement that the developer submit monthly construction reports to DHCA to allow easier oversight of the MPDU construction.

**What happens if the Park and Planning documents are modified?**

Previously: The developer had to request and execute an amendment or revision to the Agreement to Build.

New Process: Park and Planning notifies DHCA of any revisions to a preliminary plan or site plan for a project with an MPDU requirement. This amended agreement must be executed before additional building permits will be issued for the development.



Office of the Director

4



**How is the Agreement transmitted to DPS?**

Previously: The developer was responsible for presenting the document to DPS at the time the developer applies for building permits.

New Process: DPS requires that the developer sign an addendum to the application for building permits certifying that the Agreement to Build has been executed. The agreement itself must be attached to the first application for a building permit for a particular development.

**DPS' Role:**

DPS issues building permits based on receipt of a signed MPDU agreement. It releases later building permits when the MPDUs called for in the earlier stages have been constructed.

**How does DPS determine that additional building permits may be issued?**

Previously: The developer was responsible for presenting the document to DPS at the time the developer applies for building permits.

New Process: DPS requires that the developer sign an addendum to the application for building permits certifying that the Agreement to Build has been executed. The agreement itself must be attached to the first application for a building permit for a particular development.

**Outstanding question:**

**Who inspects and confirms that the MPDUs have been built according to the Agreement?**

Previously: DPS and Park and Planning would sign off on all building permits for both market rate units and MPDUs. DHCA would verify that MPDUs were being built as the developer came in to sign offering agreements for the MPDUs in the development.

New Process: Each Agreement to Build will include the site plan number of the development. The agreement will also include a complete list of each market rate and each MPDU in a development by street address and tax account number. This will enable DPS to prepare a monthly report for each by development with MPDUs showing the total number of permits that have issued for the market rate units and the MPDUs. In addition, the developer will be required to submit a monthly report on the construction progress of the MPDUs in relation to the market rate units.

EBD/RCH/cja

3

MONTGOMERY COUNTY, MARYLAND  
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AGREEMENT TO BUILD MODERATELY PRICED DWELLING  
UNITS FOR A PERMIT OF 50 OR MORE DWELLINGS

THIS AGREEMENT dated the 7th day of MAY  
2001, by and between NVR INC., T/A RYAN HOMES  
(herein "Applicant") and MONTGOMERY COUNTY, MARYLAND, (herein "County").

WHEREAS, the Applicant plans to construct 50 or more dwelling units in the subdivision known as AMBERLEA FARM, located in Montgomery County, Maryland and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provision of Chapter 25A of the Montgomery County Code, 1994, as amended, require the a percentage of the total number of dwelling units in a residential development project be moderately priced dwelling units (MPDUs); and

WHEREAS, The County is willing to issue building permits for the construction of dwelling units under the terms stated in the Agreement and pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994 as amended.

NOW, THEREFORE, in consideration of the mutual promises, conditions and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct 73 total dwelling units in the subdivision, including MPDUs in strict accordance with the construction schedule attached hereto and made a part hereof as Exhibit A.
2. All land owned by the Applicant in whole or in part or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building development is shown on the Statement of Land Owned, attached hereto, and made a part hereof as Exhibit B.
3. The Applicant shall construct MPDU s along with or preceding market rate dwelling units in the subdivision, and the County agrees that compliance with the construction schedule in Exhibit A shall satisfy the MPDU staging requirement and the provisions of Section 25A (5) (i) of the Montgomery County Code, 1994 as amended.

(6)

4. The County will issue building permits as requested by the Applicant for \_\_\_\_\_  
AMBERLEA FARM (Subdivision Name). Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for the subdivision and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for this subdivision, and/or invoke any other of the enforcement measures authorized by Section 25A-10 of the Montgomery County Code, 1994, as amended, and Executive Regulations adopted pursuant thereto, for failure to comply with this Agreement.

5. (a) Applicant must offer MPDUs for sale or rental in accordance with the requirement of Chapter 25A of the Montgomery County Code, 1994, as amended, and in accordance with any Executive Regulations promulgated, or as may be promulgated, in the furtherance of said Chapter. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by the Department of Housing and Community Affairs. The Contract of Sale or the Lease executed by Applicant for the sale or rental of any MPDU must contain language imposing a covenant running with the land invoking the requirements of chapter 25A. This provision is not to be construed as granting the rental option to those Applicants who are not eligible to rent their MPDUs according to the provisions of Chapter 25A.

(b) Applicant must, at the time of Contract of Sale or Rental Agreement is executed or otherwise agreed to, or entered into, by Applicant, whether written or oral, or at such other time as may be requested by the County, execute a separate Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirement of Chapter 25A, Montgomery County Code, 1994, as amended.

(c) The Contract of Sale, Deed, Lease and the separate Declaration of Covenants must contain language as contained in Exhibit C attached hereto, and made a part hereof. (In addition, the duly recorded Deed or executed Lease Agreement must contain specific language, in conspicuous form, subjecting the herein referred property to the Declaration of Covenants, which language shall contain the date of recordation and the Liber and Folio reference of the said duly recorded Declaration of Covenants.)

(d) The Declaration of Covenants contained in Exhibit C must be fully executed by the Applicant and must contain the necessary jurat for either individual or corporate signatures, as the case may be, in such form as may be required to properly record said Declaration of Covenants among the Land Records of Montgomery County, Maryland. Said Declaration of Covenants must be returned to Montgomery County for approval, execution and recordation by Montgomery County among the Land Records.

(7)

6. Applicant, his agents, heirs, assigns or successors, hereby irrevocably assigns to Montgomery County, Maryland, all its right, title, interest and obligation to enforce the provisions of the Declaration of Covenants referred to herein during the term the Covenants are in effect; to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law; or to enjoin any violation or attempted violation of said Covenants or the provisions of Section 25A of the Montgomery County Code, 1994 as amended.

7. Applicant must provide a copy of the final Contract of Sale or Lease Agreement for each MPDU covered by the building permits issued under the Agreement to the county, as well as settlement sheets and such other documents and information as may be required by Executive Regulations.

8. The County shall be entitled to enter upon the property and/or into the subject unit or units for purposes of inspection at all reasonable times to determine compliance with the Agreement.

9. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the approved preliminary or site plan attached hereto and made a part hereof as Exhibit D.

10. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other subsequent default of similar or different nature.

11. No failure on the part of the County to exercise , and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

12. Applicant may make written application to the Director of the Department of Housing and Community Affairs or designee for a modification of the construction schedule set forth on Exhibit A, describing the basis for such change. The Director or designee must review the application and make a final determination on the request which must be delivered to the Applicant within thirty days. Applicant may not depart from the schedule set forth on Exhibit A without the prior approval of the Director or designee.

13. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs  
100 Maryland Avenue, 4th Floor  
Rockville, Maryland 20850

Applicant:

NVR INC., T/A RYAN HOMES  
Attn: Peter Lyons  
555 Quince Orchard Rd. Suite 280  
Gaithersburg, MD 20878

14. No member, officer or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

15. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant.

16. The terms of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

17. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to, including those amendments described in Montgomery County Council Bill No. 25-88, if applicable, and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by its  
Vice President \_\_\_\_\_ and its corporate seal to be affixed, and does hereby  
appoint Peter A. Lyons  
its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery  
County, Maryland has on the day and year hereinabove written caused these presents to be  
signed by Elizabeth B. Davison representing the Department of Housing and Community  
Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-  
fact to acknowledge and deliver these presents.

9

WITNESS:

7/1/01 [Signature]

APPLICANT:

[Signature]

BY:

\_\_\_\_\_

WITNESS

MONTGOMERY COUNTY, MARYLAND

[Signature]

BY:

Elizabeth B. Davison

Elizabeth B. Davison, Director  
Department of Housing and  
Community Affairs

STAFF REVIEW BY:

Terry McHenry

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Peter A. Lyons attorney in fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 1<sup>st</sup> day of May, 2001.

My Comm. Exp: 7/1/02

[Signature]  
NOTARY PUBLIC

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Elizabeth B. Davison attorney in fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 7<sup>th</sup> day of May, 192001.

My Comm. Exp: 8/1/2001

[Signature]  
NOTARY PUBLIC

(10)

# EXHIBIT A CONSTRUCTION SCHEDULE

In compliance with Chapter 25A of the Montgomery County Code, 1994, as amended, Applicant agrees that the Units in AMBERLEA FARM (subdivision name) will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units in this subdivision and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 1994, as amended. The MPDU staging plan must be consistent with the site plan enforcement agreement. The applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. The last building built must not contain only MPDUs.

Development Phase	No. Of Market Priced Units	Mo. & Yr. Of Constr. 1/ Start of Mkt. Price Units	Mo. & Yr. Of Const. 2/ Completion of Market. Price Units	Number of MPDUS *	Mo. & Yr. Of Constr. Start of MPDUs	Mo. & Yr. Of Constr. Completion of MPDUs
Entire Community	59	11/00	09/02	14	08/01	12/01

Total Units

1. "Construction Start" is defined as the date on which footings are poured for the subject units.
2. "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

\*Applicants submitting an MPDU agreement covering less than an entire subdivision must provide the lot and block numbers for the units to be constructed in the phase of the development covered by this agreement. This information should be provided on a separate sheet of paper and attached to the agreement as an appendix.

(11)

EXHIBIT B

STATEMENT OF LAND OWNED FOR COMPLIANCE WITH THE  
MODERATELY PRICED HOUSING LAW

Pursuant to Article 25-A-5 (h) of the Montgomery County Code, 1994, as amended, Applicant hereby provides a list\* which is attached hereto as Schedule A, \*\* describing all land owned in whole or in part, or which is under contract to, the Applicant, in Montgomery County, Maryland, which is available for residential development. Applicant, in consideration for the issuance of Building Permit Application No. \_\_\_\_\_ affirms that the said Schedule A includes all property as described above for which:

1. A preliminary subdivision plan or development plan has been filed or for which a building permit application has been filed; and
2. Public water and sewer will be utilized; and
3. The optional zoning provisions of the Moderately Priced Dwelling Unit Law and/or Zoning Ordinance, are applicable, Article 25A.

Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision which is the subject of this Building Permit Application.

WITNESS:

*[Signature]*

APPLICANT

*[Signature]* VP

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of Montgomery, by Applicant(s) this 1<sup>st</sup> day of May 2001.

My Comm. Exp: 7/1/02

*[Signature]*  
NOTARY PUBLIC

\*For any Building Permit Application subsequent to the initial application subject to these requirements, Applicant needs only submit changes to the list of property holdings.

\*\*Schedule A shall contain information stating the owner's name, location and size of parcels, subdivision name, Liber and folio references of latest deeds and Plat Book references.

S:\DHCD\HOUSING\MPDU\FORMS\TSVAGRE\MNTB.WPD

\*\*\*NVR INC., T/A RYAN HOMES currently has under contract on a lot option basis thirty-two (32) MPDU townhomes in the Cross Creek Club subdivision.

(12)



MONTGOMERY COUNTY, MARYLAND  
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
100 Maryland Avenue, 4th Floor, Rockville, Maryland 20850

AGREEMENT TO BUILD MODERATELY PRICED DWELLING  
UNITS FOR A PERMIT OF 50 OR MORE DWELLINGS

THIS AGREEMENT dated the 18<sup>th</sup> day of January, 2002,  
by and between Autumn Glen, LLC (herein "  
Applicant") and MONTGOMERY COUNTY, MARYLAND, (herein "County").

WHEREAS, the Applicant plans to construct 50 or more dwelling units in the subdivision known as Germantown Station, located in Montgomery County, Maryland and to be eligible to receive benefits of the optional density provision afforded by the Zoning Ordinance for Montgomery County, Maryland, Chapter 59, as amended.

WHEREAS, the provision of Chapter 25A of the Montgomery County Code, 1994, as amended, requires that a percentage of the total number of dwelling units in a residential development be moderately priced dwelling units (MPDUs); and

WHEREAS, The County is willing to issue building permits for the construction of dwelling units under the terms stated in the Agreement and pursuant to the provisions of Chapter 25A of the Montgomery County Code, 1994, as amended.

NOW, THEREFORE, in consideration of the mutual promises, conditions and obligations provided for herein, the parties hereto agree as follows:

1. Applicant agrees to construct 112 total dwelling units in the subdivision, including MPDUs in strict accordance with the construction schedule attached hereto and made a part hereof as Exhibit A.
2. All land owned by the Applicant in whole or in part or which is under contract to the Applicant in Montgomery County, Maryland, which is available for residential building development as shown on the Statement of Land Owned, attached hereto, and made a part hereof as Exhibit B.
3. The Applicant shall construct MPDUs along with or preceding market rate dwelling units in the subdivision, and the County agrees that compliance with the construction schedule in Exhibit A shall satisfy the MPDU staging requirement and the provisions of Section 25A (5) (i) of the Montgomery County Code, 1994 as amended.

4. The County will issue building permits as requested by the Applicant for Germantown Station (Subdivision Name). Applicant acknowledges County's authority to suspend or revoke any or all building or occupancy permits issued to Applicant for the subdivision and/or to suspend or deny the issuance of all subsequent permit requests by Applicant for this subdivision, and/or invoke any other of the enforcement measures authorized by Section 25A-10 of the Montgomery County Code, 1994, as amended, and Executive Regulations adopted pursuant thereto, for failure to comply with this Agreement.

5. (a) Applicant must offer MPDUs for sale or rental in accordance with the requirement of Chapter 25A of the Montgomery County Code, 1994, as amended, and in accordance with any Executive Regulations promulgated, or as may be promulgated, in the furtherance of said Chapter. Applicant agrees to offer the MPDUs for sale or rent by completing fully and truthfully the Offering Agreement form provided by the Department of Housing and Community Affairs. The Contract of Sale or the Lease executed by Applicant for the sale or rental of any MPDU must contain language imposing a covenant running with the land invoking the requirements of chapter 25A. This provision is not to be construed as granting the rental option to those Applicants who are not eligible to rent their MPDUs according to the provisions of Chapter 25A.

(b) Applicant must, at the time of Contract of Sale or Rental Agreement is executed or otherwise agreed to, or entered into, by Applicant, whether written or oral, or at such other time as may be requested by the County, execute a separate Declaration of Covenants, to run with the land, subjecting the MPDUs to the requirement of Chapter 25A, Montgomery County Code, 1994, as amended.

(c) The Contract of Sale, Deed, Lease and the separate Declaration of Covenants must contain language as contained in Exhibit C attached hereto, and made a part hereof. (In addition, the duly recorded Deed or executed Lease Agreement must contain specific language, in conspicuous form, subjecting the herein referred property to the Declaration of Covenants, which language shall contain the date of recordation and the Liber and Folio reference of the said duly recorded Declaration of Covenants.)

(d) The Declaration of Covenants contained in Exhibit C must be fully executed by the Applicant and must contain the necessary jurat for either individual or corporate signatures, as the case may be, in such form as may be required to properly record said Declaration of Covenants among the Land Records of Montgomery County, Maryland. Said Declaration of Covenants must be returned to Montgomery County for approval, execution and recordation by Montgomery County among the Land Records.

6. Applicant, his agents, heirs, assigns or successors, hereby irrevocably assigns to Montgomery County, Maryland, all its right, title, interest and obligation to enforce the provisions of the Declaration of Covenants referred to herein during the term the Covenants are in effect; to institute any proceeding in law or equity for the collection of such sums as may be in excess of those allowed by law; or to enjoin any violation or attempted violation of said Covenants or the provisions of Section 25A of the Montgomery County Code, 1994, as amended.

7. Applicant must provide a copy of the final Contract of Sale or Lease Agreement for each MPDU covered by the building permits issued under the Agreement to the county, as well as settlement sheets and such other documents and information as may be required by Executive Regulations.

8. The County shall be entitled to enter upon the property and/or into the subject unit or units for purposes of inspection at all reasonable times to determine compliance with the Agreement.

9. The number, type, location and development phases of the MPDUs to be constructed by Applicant are shown on the approved preliminary or site plan attached hereto and made a part hereof as Exhibit D.

10. A waiver by the County of a specific default must be in writing from the County, and shall not be a waiver of any other subsequent default of similar or different nature.

11. No failure on the part of the County to exercise, and no delay in exercising, any right to remedy permitted by law or pursuant to this Agreement will operate as a waiver thereof.

12. Applicant may make written application to the Director of the Department of Housing and Community Affairs or designee for a modification of the construction schedule set forth on Exhibit A, describing the basis for such change. The Director or designee must review the application and make a final determination on the request which must be delivered to the Applicant within thirty days. Applicant may not depart from the schedule set forth on Exhibit A without the prior approval of the Director or designee.

15

13. Any notices sent pursuant to this Agreement must be delivered in writing to:

Montgomery County:

Department of Housing and Community Affairs  
100 Maryland Avenue, 4th Floor  
Rockville, Maryland 20850

Applicant: Autumn Glen, LLC  
5515 Security Lane, Suite 550  
Rockville, Maryland 20852  
ATTN: Ray Sobrino, Executive Vice-President

14. No member, officer or employee of the County, and no other public official of the County will either exercise any function or responsibility with respect to the subject matter of this Agreement during his or her tenure, or for one year thereafter have any interest, direct or indirect, in the subject matter of this Agreement. This section will not be construed to prohibit any such person from owning an MPDU as a personal residence.

15. This Agreement is binding upon the agents, successors, heirs and assigns of the Applicant.

16. The terms of this Agreement will survive the execution and delivery of any deeds or leases, and shall not merge therein.

17. Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to, including those amendments described in Montgomery County Council Bill No. 25-88, if applicable, and Applicant agrees to sign such documents as may be required to effectuate the intent and purpose of this Agreement.

IN WITNESS WHEREOF, Applicant has caused these presents to be executed by its Sole Member and Manager and its corporate seal to be affixed, and does hereby appoint **Paul A. Poto.**

its true and lawful attorney-in-fact to acknowledge and deliver these presents, and Montgomery County, Maryland has on the day and year hereinabove written caused these presents to be signed by Elizabeth B. Davison representing the Department of Housing and Community Affairs, and does hereby appoint the said Elizabeth B. Davison its true and lawful attorney-in-fact to acknowledge and deliver these presents. (16)

WITNESS:

J. Hutchins Haese

APPLICANT: Autumn Glen, LLC

By: Porten Holdings, Inc.  
A Delaware Corporation  
Sole Member and Manager

BY:

Paul A. Poto  
Paul A. Poto, President

WITNESS

MONTGOMERY COUNTY, MARYLAND

Elizabeth B. Davison

BY:

Elizabeth B. Davison  
Elizabeth B. Davison, Director  
Department of Housing and  
Community Affairs

STAFF REVIEW BY:

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Paul A. Poto attorney in fact for Applicant who is personally well known to me as the person named as attorney-in-fact in the foregoing instrument, and as attorney-in-fact, as aforesaid executed and acknowledged the foregoing instrument in the name and on behalf of Applicant, for the uses and purposes herein contained.

WITNESS my hand and seal this 9 day of January, 2002

My Comm. Exp:

JENNIFER WHIPPS  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires February 12, 2005

Jennifer Whipp  
NOTARY PUBLIC

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Elizabeth S. Davison attorney in fact for Montgomery County, Maryland, who is personally well known to me, and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, executed and acknowledged the foregoing instrument to be the act and deed of Montgomery County, Maryland for the uses and purposes herein contained.

WITNESS my hand and seal this 18<sup>th</sup> day of January, 2002

My Comm. Exp:

8/1/2005

Paul A. Poto  
NOTARY PUBLIC

(17)

# EXHIBIT A CONSTRUCTION SCHEDULE

In compliance with Chapter 25A of the Montgomery County Code, 1994, as amended, Applicant agrees that the Units in Germantown Station (subdivision name) will be constructed in accordance with the schedule indicated below. Applicant is aware that this schedule must indicate that the MPDUs shall be constructed along with, or preceding, other dwelling units in this subdivision and that failure to comply with this schedule may result in suspension or revocation of any building permit, occupancy permit or subdivision plan associated with the project described herein or such other enforcement measure authorized by Chapter 25A of the Montgomery County Code, 1994, as amended. The MPDU staging plan must be consistent with the site plan enforcement agreement. The applicant must sequence the construction of the MPDUs so that the construction of MPDUs reasonably coincides with the construction of the market rate housing. The last building built must not contain only MPDUs.

Development Phase	No. Of Market Priced Units	Mo. & Yr. Of Constr. 1/ Start of Mkt. Price Units	Mo. & Yr. Of Const. 2/ Completion of Market. Price Units	Number of MPDUS *	Mo. & Yr. Of Constr. Start of MPDUs	Mo. & Yr. Of Constr. Completion of MPDUs
One	41	2/2001	June 2002	7	Jan. 2002	Jan. 2002
Two	57	1/2002	12/2002	7	Sept. 2002	Dec. 2002

Total Units

- "Construction Start" is defined as the date on which footings are poured for the subject units.
- "Construction Completion" is defined as the date that final inspections by the Department of Permitting Services are completed.

\* Applicants submitting an MPDU agreement covering less than an entire subdivision must provide the lot and block numbers for the units to be constructed in the phase of the development covered by this agreement. This information should be provided on a separate sheet of paper and attached to the agreement as an appendix.

18

EXHIBIT B

STATEMENT OF LAND OWNED FOR COMPLIANCE WITH THE  
MODERATELY PRICED HOUSING LAW

Pursuant to Article 25-A-5 (h) of the Montgomery County Code, 1994, as amended, Applicant hereby provides a list\* which is attached hereto as Schedule A, \*\* describing all land owned in whole or in part, or which is under contract to, the Applicant, in Montgomery County, Maryland, which is available for residential development. Applicant, in consideration for the issuance of Building Permit Application No. SEE ATTACHED LIST affirms that the said Schedule A includes all property as described above for which:

1. A preliminary subdivision plan or development plan has been filed or for which a building permit application has been filed; and
2. Public water and sewer will be utilized; and
3. The optional zoning provisions of the Moderately Priced Dwelling Unit Law and/or Zoning Ordinance, are applicable, Article 25A.

Applicant affirms that the attached Schedule A includes all such property in Montgomery County, Maryland and not solely that property within the subdivision, which is the subject of this Building Permit Application.

WITNESS:

J. Hutchins Haese  
J. Hutchins Haese

APPLICANT: Autumn Glen, LLC  
By: Porten Holdings, Inc.  
A Delaware Corporation  
Sole Member and Manager

By: Paul A. Poto  
Paul A. Poto, President

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Maryland, County of Montgomery, by Applicant(s) this 9<sup>th</sup> day of January 2002.

My Comm. Exp: JENNIFER THOMPSON  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires February 12, 2005

Jennifer Thompson  
NOTARY PUBLIC

\*For any Building Permit Application subsequent to the initial application subject to these requirements, Applicant needs only submit changes to the list of property holdings.

\*\*Schedule A shall contain information stating the owner's name, location and size of parcels, subdivision name, Liber and folio references of latest deeds and Plat Book references.

(19)

**SCHEDULE C**  
**IDENTIFICATION OF MPDUS BEING OFFERED**

**Building One**

Parcel A as described on the Subdivision Record Plat #21621 entitled Germantown Station, 7 MPDU units with the following addresses:

ADDRESS	IDENTIFICATION	LEGAL	UNIT TYPE
13749 Harvest Glen Way	bldg permit # 262263	Parcel A, Lot 2	C-Int Brk Front
13751 Harvest Glen Way	bldg permit # 262266	Parcel A, Lot 1	C-End
13747 Harvest Glen Way	bldg permit # 262267	Parcel A, Lot 3	C-Int Gable
13745 Harvest Glen Way	bldg permit # 262268	Parcel A, Lot 4	C-End Brk Front
13575 Harvest Glen Way	bldg permit # 262269	Parcel A, Lot 5	A-End
13755 Harvest Glen Way	bldg permit # 262270	Parcel A, Lot 6	B Unit
13753 Harvest Glen Way	bldg permit # 262271	Parcel A, Lot 7	A-End

Parcel size is 9,864 sq ft

Liber and Folio is of the Deed is 18553- 057

**Building Two**

Parcel D as described on the Subdivision Record Plat #21622 entitled Germantown Station, 7 MPDU units with the following addresses:

ADDRESS	IDENTIFICATION	LEGAL	UNIT TYPE
13644 Harvest Glen Way	To be Permitted	Parcel D, Lot 1	C-End Brk Front
13646 Harvest Glen Way	To be Permitted	Parcel D, Lot 2	C-Int Gable
13648 Harvest Glen Way	To be Permitted	Parcel D, Lot 3	C-Int Brk Front
13650 Harvest Glen Way	To be Permitted	Parcel D, Lot 4	C-End
13652 Harvest Glen Way	To be Permitted	Parcel D, Lot 5	A-End
13654 Harvest Glen Way	To be Permitted	Parcel D, Lot 6	B Unit
13656 Harvest Glen Way	To be Permitted	Parcel D, Lot 7	A-End

Parcel size is 9,118 sq ft

Liber and Folio is 18553 057

20





DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS


Douglas M. Duncan  
County Executive

Elizabeth B. Davison  
Director

MEMORANDUM

September 28, 2005

TO: Steven Silverman, Chair  
Planning, Housing, and Economic Development Committee

FROM:  Elizabeth B. Davison, Director  
Department of Housing and Community Affairs

SUBJECT: The MPDU Lottery and Point System

**Purpose**

This memorandum explaining the MPDU point system and its relationship to the MPDU lottery process was prepared in response to your inquiry at the PHED meeting on September 19, 2005. The memo also answers your questions regarding the incomes of MPDU purchasers, and length of time MPDU applicants have been in the program.

**THE PRIORITY POINT SYSTEM**

The priority point system was adopted on April 22, 2003 through Council Resolution 15-130. The purpose of the point system is to ensure that certificate holders who live in Montgomery County, work in Montgomery County, and who have been in the MPDU program for longer periods of time have a higher priority to be chosen in a lottery to purchase an MPDU.

**How the Point System Works**

Points are assigned as follows:

- one (1) point for living in Montgomery County;
- one (1) point for working in Montgomery County; and
- one (1) point for each year in the program (up to three (3) points total)

The highest number of points a certificate holder can accumulate is five (5) points. The number of points is shown on the Certificate of Eligibility. As each lottery form comes in, the number of points that have been assigned is written on the form, and the form is put in the

(21)



Office of the Director

grouping of others with the same number of points. When the lottery is held, only the lottery forms for the five point certificate holders are put in the lottery box.

Depending on the number of units available in the lottery, all of the lottery forms for the five point entrants may be chosen. If so, and if it is determined that more names are needed, the four point lottery forms are put in the box to be pulled. As each form is pulled it is assigned a number which is based on the order drawn i.e., the first person drawn has the first selection of an MPDU.

A lottery list is established from the drawing and that list, together with the lottery forms drawn, is sent to the sales agent for the builder who then begins the process of making appointments for these individuals to go over floor plans, lots, options, etc. A list of names chosen in the lottery is posted on the bulletin board in the MPDU office as well as on the MPDU website.

### **Evaluation of the Point System**

While many types of point and/or priority systems could be developed, this relatively simple system has demonstrated its value since its adoption. It is both easy to administer and to explain to MPDU customers. It has been effective in addressing the complaints of MPDU customers that new applicants and/or persons from outside the county had the same chance of being drawn to purchase MPDUs as persons who live and/or work in the county. For these reasons, the Department would not recommend a change in the system at this time.

### **INCOMES AND LENGTH OF TIME IN THE PROGRAM**

#### **Incomes**

The income distribution of purchasers in 2003 and 2004 are as follows (the information for 2005 has not yet been compiled).

**Income Distribution of Purchasers of MPDUs in 2003 and 2004**  
(Total of 155 Households)

<b>Household Income (\$ in Thousands)</b>							
<b>Below \$20*</b>	<b>\$20-\$25</b>	<b>\$26-\$30</b>	<b>\$31-\$35</b>	<b>\$36-40</b>	<b>\$41-\$45</b>	<b>\$46-\$50</b>	<b>\$50-\$55</b>
2	31	28	35	35	16	5	3

\* - households below the minimum may be eligible to purchase if they provide evidence that they can secure mortgage financing

22

### **Length of Time in the Program**

As of June 30, 2005, all applicants with 5 points (indicating they had been in the program for at least three years) were selected in at least one lottery to purchase an MPDU. In the lotteries held in July and August of 2005, the first drawings were among the 4 point applicants, with many three point applicants being selected for developments for which many names were required.

It is important to note that 5 point applicants are not required to purchase a unit for which they are drawn. Lottery winners may decline a unit if the price, location, or some other variable does not meet their requirements. Therefore, some 5 point applicants may be in the program for four years or more.

The current break down of points accumulated by applicants is as follows:

**Points Accumulated by Current Sales Certificate Holders**  
(as of September 26, 2005)\*

<b>Number of Certificates issued</b>	<b>1 pt.</b>	<b>2 pt.</b>	<b>3 pt.</b>	<b>4 pt.</b>	<b>5 pt.</b>
1,181	43	283	694	153	8

\* - several renewal applications received in the July application window are still pending approval.

EBD/cja

LU 8 ZONING



KL  
CC  
SBF  
LL  
MF  
MM  
RL  
DL

OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan  
County Executive

MEMORANDUM

Bruce Romer  
Chief Administrative Officer

September 27, 2005

TO: Thomas E. Perez, President  
Montgomery County Council

017650

FROM: Bruce Romer  
Chief Administrative Officer

Derick P. Berlage, Chairman  
Maryland National Capital Park and Planning Commission

SUBJECT: Department of Permitting Services (DPS) and Maryland National Capital Park and Planning Commission (MNCPPC) Biweekly Report As Required by County Council Resolution 15-1125 Short-Term Measures to Assure Compliance with Site Plans

The County Council adopted Resolution 15-1125 Short-Term Measures to Assure Compliance with Site Plans on July 26, 2005. The following action is requested in the resolution.

"The County Council for Montgomery County, Maryland urges the Montgomery County Planning Board and the Department of Permitting Services to take these actions immediately. The Chair of the Planning Board and the Director of the Department of Permitting Services must provide biweekly reports to the Council updating the Council on their progress in implementing each step outlined in paragraph 7."

Attached you will find the fourth biweekly report which is a joint report from DPS and MNCPPC as required in the above section of the resolution.

If you have questions or need additional information please contact Robert Hubbard, Director DPS on 240-777-6363 or Charlie Loehr, Director MNCPPC on 301-495-4511.

Attachments

cc: Robert Hubbard  
Charles Loehr

24

Department of Permitting Services and  
Maryland National Capital Park and Planning Commission  
Biweekly Update Report to the County Council on  
Resolution: 15-1125 Short-Term Measures to Assure Compliance with Site Plans  
Report Date: September 26, 2005

In response to the problems uncovered in Clarksburg, the Montgomery County Planning Board (MNCPPC) and the Department of Permitting Services (DPS) agreed to undertake a number of immediate actions to ensure thorough review and compliance of building permits with site plans while more comprehensive reviews of the planning and enforcement process are pending. In turn, the County Council asked for bi-weekly reports that would detail the progress made with respect to each proposed action. This constitutes the fourth of these biweekly reports.

**Action: No new building permits may be issued in the Clarksburg Town Center development until further review and certification of compliance with appropriate site plans by Park and Planning and the Department of Permitting Services.**

Progress Report:

- As stated in the first report, a process has been put in place that requires building permit applications to include a statement that the height and setbacks shown on the permit drawings comply with the height and setback standards in the site plan. This statement must be signed and sealed by a licensed design professional in the State of Maryland.
- No new building permits subject to this process have been issued in the Clarksburg Town Center.
- Work has been stopped on the five Manor Houses, on two other condominium units, and on two, as yet unbuilt sections of Clarksburg Town Center while the Planning Board considers additional alleged violations.

**Action: All requests to amend site plans in Clarksburg must be deferred until reviews of what went wrong in Clarksburg and elsewhere are completed and the Council has an opportunity to take necessary actions.**

Progress Report:

- MNCPPC – The Planning Board originally scheduled the hearing to consider all other alleged violations on Thursday, September 15<sup>th</sup>. Since the number of allegations has continued to grow, a decision was made to hold two hearings. The first of these will be Thursday, October 6<sup>th</sup>. The second will be Tuesday, October 25<sup>th</sup>. The Sanctions/Plan of

Compliance hearing will be held on Thursday, November 3<sup>rd</sup>. Requests to amend site plans in Clarksburg Town Center will continue to be delayed until this set of hearings has been completed.

**Action: The Department of Permitting Services, Department of Public Works and Transportation, and the Planning Board must review the roads and other required infrastructure within the Clarksburg Town Center, and provide the Council with a report by August 15, 2005 regarding the status of the Implementation of the provisions of the Clarksburg Town Center site plans pertaining to road infrastructure, including recommendations for ensuring that the necessary road infrastructure is in place in a timely fashion.**

Progress Report:

- As required, MNCPPC, DPWT, and DPS submitted a report to the Council regarding the road infrastructure within the Clarksburg Town Center, including recommendations for ensuring that the necessary road infrastructure is in place in a timely fashion.

DPS Staff is working with Newland Community on the following to help improve the local traffic access in and around the Town Center area:

- Expedite the construction of the four lane section of Stringtown Road from MD 355 to just before overlook Park Drive
- Coordinate with DPWT and SHA on the installation of a temporary traffic signal at MD 355 and Stringtown Road by December 2005 or January 2006
- Work with the design engineer for Stringtown Road to minimize the future road closure duration
- Work with SHA, DPWT staff and other developers as well as Newland communities to address any issues such as road closure, or possible land acquisition through the creation of future CIP projects in regard to completion of various roadways in and around the Clarksburg Town Center.

**Action: A county wide freeze on issuance of Building Permits in site plan zones (residential and commercial) continues until height limit and setback requirements can be verified by the Department of Permitting Services.**

Progress Report:

- Three new commercial applications and forty-four new residential applications have been submitted by DPS to MNCPPC and are being reviewed.

**Action:** Almost 200 building permit applications (residential and commercial) are currently pending with county authorities. No permits may be issued until each applicant resubmits site plans that disclose height and setback compliance. Department of Permitting Services and the Planning Board must verify the setback and height restrictions spelled out in the approved site plan.

**Progress Report:**

- Letters were sent to applicants of the 200 building permit applications requesting them to resubmit their building permit site plans with information stating that it is in compliance with the MNCPPC site plan requirements.

Below is a chart showing the status of application sent to MNCPPC. (Numbers in previous reports have been inclusive of more than the 200 list. This table illustrates and clarifies accurate numbers as of the date of this report).

	List of 200	Other Applications
# Applications sent to MNCPPC	19	163
# Approved by MNCPPC	13	47
# Disapproved by MNCPPC	1	22
#Pending Review	5	94

Please note that MNCPPC has developed a new checklist, which must be carefully followed during the review of every permit. This increases the amount of time for review. An additional reviewer was just hired on a contract basis to ensure the timely review of building permits.

**Action:** Any building permit application that uses the term “story” to describe the height of a building, instead of indicating proposed height by actual measurement of the building, must be rejected.

**Progress Report:**

- No building permit applications have been received using the term “story” to describe the height of a building.

**Action: The Planning Board and Department of Permitting Services must conduct an immediate audit of site plans approved throughout Montgomery County since January 1, 2003 to ensure that work being done is in accordance with the specifications of the approved plans. Planning Board and Department of Permitting Services should immediately suspend development in any site plan where violations are uncovered.**

Progress Report:

- DPS and MNCPPC have determined that 118 site plans have been approved since January 1, 2003. See the attached table for inspection results.

DPS and MNCPPC hope to complete this audit by mid October. It should be noted that construction has not yet been started in several of these projects.

**Action: Park and Planning mid-level personnel must no longer approve “administrative” or so-called minor amendments to site plans. The Director of Park and Planning must personally approve every amendment to a site plan that is not considered by the Planning Board and any site plan amendment review, major or minor, must include public notice.**

Progress Report:

- MNCPPC – As explained in the last report, a new procedure has been put in place for administrative amendments. All such amendments are now documented, publicly noticed, and can only be approved by the Director of Park and Planning. In addition, we are in the process of developing a list that would show the type of changes that can even be considered for administrative amendments.

**Action: Subject to Council approval the Department of Permitting Services and the Planning Board must submit to the county Council by July 30, 2005 a staffing plan to increase the number of personnel dedicated to site plan and other enforcement duties. The resources for additional personnel must come from increased fees on developers and builders, not from taxpayer funded sources.**

Progress Report:

- DPS and MNCPPC submitted staffing plans to the County Council

**Action: Existing personnel in the Department of Permitting Services and the Planning Board must be immediately redeployed to perform site plan inspections. The County Council will be provided with a plan for training new and redeployed employees.**



Progress Report:

- DPS has redeployed one inspector full time to perform site plan inspections.
- MNCPPC has redeployed three individuals from County-Wide Planning on a temporary basis to help with inspections. In addition, two individuals from Community Based Planning have been redeployed to assist with the review of Signature Set Documents; one site plan reviewer has been temporarily reassigned from Prince Georges, and a member of the Montgomery County Parks staff will also assist in site plan review. Finally, as mentioned above, a person is being brought in on contract to assist with building permit review.
- DPS is training MNCPPC field staff to measure the height of buildings.

**Action: The Department of Permitting Services and the Planning Board must immediately begin the process of recruiting additional, qualified personnel to perform enforcement functions for the two agencies.**

Progress Report:

- DPS and MNCPPC have created and advertised positions outlined in their respective staffing plans.

**Action: The builders and developers involved in the proceeding pending before the Planning Board pertaining to the Clarksburg Town Center development have agreed to the community's request that the Planning Board investigate and adjudicate *all* allegations of violations prior to adjudication of the sanctions. The Council endorses this approach.**

Progress Report:

- MNCPPC – The Planning Board delayed the Sanctions/Plan of Compliance hearing with respect to height and setback violations that was originally scheduled for July 28<sup>th</sup> until the Planning Board has had a chance to review all of the alleged violations. That hearing is currently scheduled for Monday, October 3<sup>rd</sup>.

Inspection Results as of 9/23/05											
PLAN #	PLAN NAME	PB APV. DATE	STATUS	Units In / Proposed	Notes	Landscape	Lighting	Paving	Recreation	HT	SB
820040030	CIDER BARREL PROPERTY	11/20/2003	50%			U	U	U	U	C	NOV
81994012A	CLOPPER'S MILL	07/08/2004	<25%			U	U	U	NA	C	C
820030000	PARKSIDE	01/16/2003	75%			U	U	U	U	C	C
82002022A	HIGHLANDS AT CLARKSBURG	07/24/2003	75%			U	U	U	C	C	P
820030200	TONY'S CAR WASH, LOT 1	05/15/2003	100%			I	I	C	NA	P	P
820030180	WISTERIA BUSINESS PARK	05/15/2003	100%			C	C	C	NA	P	P
820030030	FAIRFIELD AT GERMANTOWN	01/16/2003	25%			U	U	U	U	P	P
82000042A	PITA SUBDIVISION	09/11/2003	100%	1 of 1		C	C	C	N/A	P	P
820030340	SUMMERFIELD CROSSING	11/13/2003	<50%			U	U	U	U	C	C
820050020	AVALON AT DECOVERLY - PHASE 2	10/28/2004	S	0 of ?	OK for TPF only	~	~	~	~	~	~
820030160	JOHNS HOPKINS UNIVERSITY	02/13/2003	100%			I	I	C	N/A	P	P
82004008A	POTOMAC RIDGE BEHAVIOR HEALTH	05/12/2005	25%	1 of 1		U	U	U	N/A	P	P
81999024A	SHADY GROVE ADVENTIST HOSPITAL	05/06/2004	<25%	1 of 1		U	U	U	N/A	P	P
81977013A	HAMPTONS AT TOWN CENTER	11/06/2003	100%			I	C	C	C	P	P
820030110	THE MEADOWS AT HURLEY RIDGE	05/01/2003	50%	114 of 219		U	U	U	U	P	P
820030190	TIMBER CREEK @CLARKSBURG VILLA	01/30/2003	100%	24 of 24		I	C	C	I	P	P
820030230	GATEWAY COMMONS	07/24/2003	<25%		GRADING SITE	U	U	U	U	P	P
820000190	HOYLES MILL VILLAGE - SEC 2D	12/04/2003	50%			U	U	U	U	P	P
820050120	BAUM PROPERTY	01/20/2005	NS	~	~	~	~	~	~	~	~
820030070	CLOVERLEAF CENTER	03/13/2003	NS	~	~	~	~	~	~	~	~
820040330	ETON SQUARE	07/22/2004	NS	~	~	~	~	~	~	~	~
820040220	GREENWAY VILLAGE AT CLARKSBURG	07/22/2004	NS	~	~	~	~	~	~	~	~
81997007A	KINGSVIEW VILLAGE - SECT. 8	12/23/2004	NS	~	~	~	~	~	~	~	~
820040290	LIBERTY HEIGHTS	06/03/2004	NS	~	~	~	~	~	~	~	~
820030210	MIDDLEBROOK INDUSTRIAL PARK	05/01/2003	NS	~	~	~	~	~	~	C	C
820050090	WOODCREST	12/23/2004	NS	~	~	~	~	~	~	~	~
820050220	WESTECH VILLAGE CORNER	06/02/2005	S		GRADING	U	U	U	U	~	~
820030100	CLOVERLY COMMERCIAL	11/06/2003	NS	~	~	~	~	~	~	~	~
820040060	DAY PROPERTY	12/18/2003	NS	~	~	~	~	~	~	~	~
820030080	LOCKWOOD PROPERTY	02/13/2003	NS	~	~	~	~	~	~	~	~
81987009A	ASPEN HILL SHOPPING CENTER	12/11/2003	NS	~	~	~	~	~	~	~	~
820050070	FAIRLAND VIEW	01/27/2005	NS	~	~	~	~	~	~	~	~
820050190	ROYCO'S ADD TO DERWOOD (LEXUS)	04/28/2005	NS	~	~	~	~	~	~	~	~
820050160	THE TOWNS OF DOGWOOD	02/10/2005	NS	~	~	~	~	~	~	P	P
820050100	WHETSTONE RUN	02/10/2005	NS	~	~	~	~	~	~	~	~
820040300	CREEKSIDE AT LEISURE WORLD	07/29/2004	50%		High Rise	U	U	U	U	P	P
82001003A	MONTGOMERY COUNTY AIRPARK	05/15/2003	75%	1 of 1		U	U	U	U	P	P
81999048A	CROSS CREEK CLUB, PHASE II	02/13/2003	75%	17 of 25		U	U	U	U	C	C
820030380	GREENCASTLE TOWNS	10/02/2003	S		GRADING	U	U	U	U	P	P
820030130	RANDOLPH MANOR	06/19/2003	75%		M (shade structure)	I	C	I	C	P	P
820030240	BANCROFT NORTH	09/18/2003	75%	7 of 7		I	U	C	U	P	P
820030310	HOMECREST	06/26/2003	75%	5 or 5		U	C	C	C	P	P
820040040	MEADOWSWEET	02/20/2004	50%	11 of 31		U	U	C	U	P	P
820030390	HODGES LANDSDALE PROPERTY	10/02/2003	50%	11 of 29		U	U	U	U	C	C
820040100	OLNEY MANOR	11/20/2003	75%	1 of 1		I	C	I	I	P	P
820040110	MARY BOLAND SUBDIVISION	04/01/2004	S			U	U	U	U	P	P
820030170	RICHARDS ADD TO ASHLEY HOLLOW	05/01/2003	25%	11 of 25		U	U	U	U	P	P
820030300	FRALEY PROPERTY	09/11/2003	S		GRADING	U	U	U	U	P	P

82000024B	SCANDINAVIAN IMPORT SERVICE CE	12/04/2003	S			U	U	U	U	P	P
820040180	POTOMACS EDGE	06/10/2004	TPF only (fo	0 of 34	TPF for Demo is OK	~	~	~	~	~	~
820030290	THE ESTATES AT GREENBRIAR PRES	10/16/2003	S	0 of 31	LOD is OK (earthwor	U	U	U	U	P	P
820050200	PORTICO	03/31/2005	NS	~	~	~	~	~	~	~	~
820040010	OAKRIDGE CORPORATE CENTRE	10/28/2004	NS	~	~	~	~	~	~	~	~
820040020	OAKRIDGE CORPORATE CENTRE	01/08/2004	NS	~	~	~	~	~	~	~	~
820030060	WESTFARM TECH PARK-PARCEL GGGG	05/01/2003	<100%	1 of 1	not yet occupied	I	C	NOV	I	P	P
820040200	POTOMAC PRESERVE	03/04/2004	NS	~	~	~	~	~	~	~	~
820040160	WILDWOOD MANOR SHOPPING CENTE	01/08/2004	<100%	1 of 1	F.R.I.T.S notified	I	C	NOV	NA	P	P
820040210	BUCKINGHAM TERRACE	05/27/2004	NS	~	House demolished	~	~	~	~	~	~
820040270	LEESBOROUGH	11/04/2004	NS	~	Active school site	~	~	~	~	~	~
820030220	WHEATON PLACE	05/22/2003	<100%	9 of 9	FCP may conflict with	I / NOV	C	C	NA	P	P
820050050	THE ENCLAVE	12/09/2004	S	0 of 1		U	U	U	U	P	P
820050180	WHITE OAK	02/10/2005	NS	~	~	~	~	~	~	~	~
820030370	8045 NEWELL STREET	07/17/2003	75%	1 of 1	wall/path misaligned	U / NOV	U	U	U	P	P
820050210	8215 FENTON STREET	03/11/2005	NS	~	~	~	~	~	~	~	~
820030250	SILVER SPRING PARK/LOFTS 24	05/01/2003	50%	1 of 1		U	U	U	U	P	P
820050040	THE CRESCENT	10/21/2004	S	0 of 1	Excavation not comp	U	U	U	U	P	P
820040280	WILLIAMS AND WILLSTE BUILDING	05/27/2004	75%	1 of 1	SP has been amende	U	U	U	U	P	P
820040320	EZ STORAGE - TAKOMA PARK	07/29/2004	75%	.95 of 1		U	U	U	NA	P	P
820030260	GREENBRIAR PRESERVE	10/16/2003	25%	4 of 30	Fence Caps missing	U / I	U	U	U	C	P
820030330	POTOMAC COUNTRY CORNER	10/02/2003	50%	7 of 29		U	U	U	U	P	P
820030120	TRAVILLE	02/19/2004	S	0 of 2	Grading/foundation	U	U	U	U	P	P
820030410	MAPLE RIDGE TOWNHOMES	10/16/2003	75%	37 of 59	Approaching 70%	U / I	I	I	I	P	P
820040260	GIANCOLA QUARRY	07/22/2004	NS	~	FCP not approved	~	~	~	~	~	~
820050110	TWINBROOK COMMONS	12/09/2004	NS	~	~	~	~	~	~	~	~
820050140	U.S. PHARMACOPEIA	03/03/2005	S	0 of 2	Sequence Violation	U	U	U	U	P	P
820030320	ORCHARD AVENUE OFFICE	07/24/2003	NS	~	~	~	~	~	~	~	~
82003032A	ORCHARD AVENUE OFFICE	04/07/2005	NS	~	see also 820030320	~	~	~	~	~	~
820040140	ARLINGTON EAST	02/19/2004	NS	~	~	~	~	~	~	~	~
82000023A	EDGEMOOR IV	01/20/2005	NS	~	~	~	~	~	~	~	~
820040070	TOWNS AT ROSEDALE PARK	12/04/2003	50%	3 of 6	All foundations in	U	U	U	U	P	P
820030270	VERIZON BETHESDA-STANFORD STRE	06/05/2003	50%	.75 of 1		U	U	U	U	P	P
820040250	WOODMONT CORNER	07/22/2004	NS	~	~	~	~	~	~	~	~
820040240	BETHESDA VIEW CONDOMINIUMS	05/06/2004	S	0 of 1	Excavation only, no E	U	U	U	U	P	P
81996026A	BROOKDALE	12/09/2004	75%	1 of 1	Elevation differences /	U	U	U	U	P	P
82001010A	WISCONSIN PLACE	04/10/2003	25%	.25 of 7	Garage approaching	U	U	U	U	P	P
820050030	WESTFIELD SHOPPING CENTER	01/27/2005	NS	~	~	~	~	~	~	~	~
820040120	FORTUNE PARC	02/12/2004	25%	26 of 150	other foundations in	U	U	U	U	P	P
820040150	FORTUNE PARC	03/18/2004	S	0 of 11	Parcel L apt. underwa	U	U	U	U	P	P
820030360	ROCK SPRING CENTRE APARTMENT (to	11/20/2003	S	0 of 1	Developer has put pro	U	U	U	U	P	P
820040170	ROCK SPRING PARK CENTER (Tower II)	02/26/2004	NS	~	Shares LOD with 820	~	~	~	~	~	~
820040090	4933 FAIRMONT AVENUE	01/15/2004	S	.25 of 1	Foundation work at s	U	U	U	U	P	P
820040130	ALEXAN MONTROSE CROSS PH III	01/29/2004	S	0 of 1	Path staked out	U	U	U	U	P	P
820040230	JEFFERSON AT INIGO'S CROSSING	04/15/2004	S	0 of 2	Foundation work	U	U	U	U	P	P
81995036B	MONTROSE CROSSING	04/24/2003	100%	NA	time extension onl,y	NA	NA	NA	NA	NA	NA
95	Site Plans to date										
Key:											
C	Work completed in compliance with approved site plan.										
I	Incomplete elements that will be addressed by developer.										
U	Work is underway.										
NOV	Notice of violation.										
P	Inspection Pending.										
-	No activity has begun.										



DEVELOPMENT REVIEW DIVISION  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

**DO NOT  
REMOVE**

## **STOP WORK ORDER**

**UNA ORDEN DE PARRAR EL TRABAJO SE HA FIJADO EN ESTA PROPIEDAD.  
Usted debe parar todo el trabajo inmediatamente!**

**THIS IS AN OFFICAL NOTICE - REMOVAL, OBSTRUCTION OR ALTERATION IS PROHIBITED BY LAW!**

Plan No.: Clarksburg Town Center - Site Plan Nos. 8-98001 and 8-02014.

Name and Address of Owner: NNPII - Clarksburg LLC  
8201 Greensboro Drive  
McLean VA 22102

Nature of Alleged Violation: Record plats inconsistent with approved site plan in violation of Montgomery County Code, Division 59-D-3 (Site Plan). Lot size and unit type inconsistent with approved site plan (Phases 2D and 1A-3); site grades inconsistent with original signature set approval (Parcel A, Block H within Phase 2A).

Place & Time Violation Occurred: Ongoing.

**Action to be Discontinued:** All land disturbing and construction activities within:

1. Phase 2D (except construction within Burdette Forest Road is not stopped);
2. Phase 1A-3; and
3. Parcel A, Block H within Phase 2A.

All work within the areas referenced above must cease immediately, *except* work required to comply with any regulatory agency having jurisdiction over compliance with applicable regulations (e.g., Montgomery County's Department of Permitting Services). Work stopped includes, but is not limited to: earth movement, tree felling, clearing, paving, and building construction. Only those activities required and authorized to correct violations or ordered by permitting agencies are allowed.

**Action Not Discontinued:**

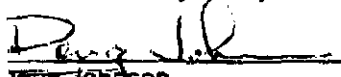
Work is not stopped on: (1) homes under construction or under contract to third-party purchasers before July 7, 2005; (2) Burdette Forest Road; or (3) roads, infrastructure, amenities or other construction activities outside the areas specifically identified above.

**Action to be Taken:** The Owner must submit a Plan of Compliance to the Montgomery County Planning Board for review and approval, and subsequently complete all corrective action in any approved Plan of Compliance, before any work in these Phases may resume on site.

Planning Board Hearing Date to Review Order: October <sup>27</sup> 2005.

### **Certification of Inspector**

I hereby certify that the contents of the foregoing paper are true to the best of my knowledge, information and belief.

  
Doug Johnsen  
Inspector  
01-495-4571

### **IMPORTANT NOTICE**

Written permission is required to resume work. Call 301-495-4571 (Doug Johnsen) to schedule a re-inspection.

you wish to contest/dispute this STOP WORK ORDER, contact M-NCPPC Office of General Counsel at 301-495-4846 to schedule an appointment.

Posted: 9/20/2005 3:30 pm  
(Date/Time)

32

# CB-42 2002 Planning Director Administrative Approvals

## Limited Departures (All Types):

- \* Within 10% of Standard Requirements
- \* DPLS - W/I 10%, Max 100 Parking Spaces or 1 Loading Space
- \* Required Findings Must be Made
- \* Posting Required - May Not be Waived
- \* No Variances, Revising Conditions or Other Requirements Imposed by the Board or Council
- \* No Delegation of Director's Authority
- \* No CB-15 (Info Mailing & Affidavit) or CB 13 (Previous POR) Reqs

## Limited Minor Amendts to Approved Conceptual Site Plans:

- \* Must be Limited in Scope and Nature, and May Not:
  - a. Add or Delete an Approved Land Use
  - b. Relocate Significantly, an Approved Land Use
  - c. Alter Significantly, an Approved Circulation Plan
  - d. Increase the Density or Intensity of Uses
- \* Required Findings Must be Made
- \* Posting Required - May Not be Waived
- \* Director May Delegate Authority to Staff
- \* No Variances, Revising Conditions or Other Requirements Imposed by the Board or Council
- \* No CB-15 (Info Mailing & Affidavit) or CB 13 (Previous POR) Reqs

## Limited Minor Amendts to Detailed Site Plans:

- \* 10% Max Increase in GFA of a Building
- \* 10% Max Increase in Land Area Covered by a Structure Other Than a Building
- \* Redesign of Parking or Loading Areas
- \* Redesign of Landscape Plan
- \* New or Alt Architectural Plans (of equal or superior quality)
- \* For Engineering Necessities to Grading, Utilities, SWM or Other Related Plan Elements
- \* Any Other Element of Minimal Effect
- \* Required Findings Must be Made
- \* Director May Delegate Authority to Staff
- \* Posting May be Waived
- \* No Variances, Revising Conditions or Other Requirements Imposed by the Board or Council
- \* No CB-15 (Info Mailing & Affidavit) or CB 13 (Previous POR) Reqs

## Limited Minor Changes to Approved SE Site Plans:

- \* 10% Max Increase in GFA of a Building
- \* 10% Max Increase in Land Area Covered by a Structure Other Than a Building
- \* Redesign of Parking or Loading Areas
- \* Redesign of Landscape Plan
- \* Required Findings Must be Made
- \* Director May Delegate Authority to Staff
- \* Posting May be Waived
- \* No Variances, Revising Conditions or Other Requirements Imposed by the Board or Council
- \* No CB-15 (Info Mailing & Affidavit) or CB 13 (Previous POR) Reqs

## General Posting Requirements:

- \* Post Within 10 Days of Acceptance
- \* 20-Day Posting Period for Hearing Requests
- \* No Amendments After Initial Posting
- \* If No Hearing Request, Director May Act
- \* Director Approval is Final - No Administrative Appeal
- \* If Director Disapproves or Public Hearing is Requested, Treat as Rejected That Day and Follow Planning Board Procedures:
  - a. CB-15 Info Mailing & Affidavit
  - b. CB-13 Previous POR Notice
  - c. Repost for Planning Board Hearing
  - d. Technical Staff Report

Revised January 13, 2005

**THE RULES OF PROCEDURE  
FOR THE  
MONTGOMERY COUNTY PLANNING BOARD  
MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

**SECTION 1 - PURPOSE**

The purpose of these rules is to establish procedures for the conduct of hearings in all cases in which a final decision is made by the Planning Board after a hearing required by law. The following matters shall be subject to these rules:

- A. Cluster Development - Pre-preliminary plans of subdivision.
- B. Preliminary plans of subdivision.
- C. Site plan review.
- D. Central Business District - Optional Method of Development\*.
- E. Building permits subject to Article IV, Chapter 8, Montgomery County Code, which require a timely adequate public facilities determination by the Planning Board.

**SECTION 2 - NOTICE**

Unless otherwise provided herein or required by law, regulation or ordinance, notice of all the proceedings undertaken pursuant to these rules shall be made as provided below.

A. (1) Notice of the Filing of an Application -

The applicant shall obtain the names and addresses of the confronting and adjacent property owners, and shall mail them a notice of application as soon as possible, but not later than 10 calendar days after the date of application. When a confronting or adjacent property includes a multi-unit building, notice shall be sent to the property owner, the building management company and, where appropriate, the condominium association. When a confronting or adjacent property is common open space for a cluster-type development, notice shall be sent to the homeowner's association and to any individual property owner located within 300 feet of the subject application.

The list of notified property owners shall be submitted to the Planning Department staff at the same time that notice is mailed. The staff shall send notices to the appropriate civic associations within the same period. All notices required under this section must state that an application has been filed with the Planning Board, and shall include the following descriptive material:

- (a) the application reference number;
- (b) reference to the statutory authority regulating review of the application;

\*Separate rules for CBD Optional Method applications were adopted previously and remain in effect.

- (c) a brief description of the location and character of the project proposal, and
- (d) a copy of the proposed land plan.

If an application is pending for more than one year, or if an amendment to a previously approved application is requested, the applicant is responsible for updating the list of owners, notifying any new adjacent and confronting property owners, and providing a copy of the updated list to the Planning Department.

**(2) Required Notice Due to Off-Site Public Facility Improvements.-**

In addition to the foregoing, the Planning Board staff in the course of reviewing an application subject to these rules may reasonably determine, as provided below, that additional notice must be directed to certain potentially interested parties not otherwise afforded notice of the filing of such application. This requirement ordinarily shall arise in the context of a review of a preliminary plan application, the approval of which could require the construction of or improvements to certain public facilities (especially transportation facilities) not adjacent or in close proximity to the subject property, which construction or improvements:

- (a) are not contemplated by the pertinent Master Plan; or
- (b) in the exercise of reasonable discretion, as solely determined by staff, are deemed to have a potentially significant and previously unforeseeable impact on property adjacent to or in the vicinity of the public facility.

If a determination is made that notice must be made, staff shall then determine which, if any, registered common ownership associations confront or adjoin the area of the facility and which, if any, registered "localized" umbrella civic associations (typically confined to the boundaries of the pertinent planning area) may embrace the area of the facility. Staff shall provide this information to Applicant and Applicant shall provide notice of the possible construction to such entities.

The notice must contain the descriptive material described in paragraph (A)(1) above, together with other available descriptive material detailing the contemplated construction of or improvement to the public facility. The notice must be directed to each designated association no later than 20 days prior to a public hearing on the application.

Each association identified pursuant to this subsection must also be provided written notice of the date and time for a public hearing on the application, which notification may be incorporated in the notice of the application and possible public facility construction provided for above if the date and time of the hearing is then known.

**B. Establishment of Application Date and Scheduling of Planning Board Hearing.-**

An application shall not be considered complete and the statutory review time limit shall not commence until all supporting materials, as listed on a published application checklist for submission requirements, are made available to the Planning Board staff for review. The Subdivision Coordinator or his designee will make the final determination at the Subdivision

Review Committee meeting as to whether or not an application was complete as originally submitted. If complete as submitted, the application date is the date of original submission. If not complete as submitted, the application date will be the date the required information is submitted. New or updated information submitted after an application date has been established does not change the application date.

An application will not be considered complete for purposes of this rule if a rezoning or special exception is required to implement the plan as proposed. However, if a plan is accepted as complete under the "old" zoning, and a rezoning occurs, a revised plan may be submitted under the "new" zoning and retain the previous application date for whatever number of trips were included in the first plan. Any additional trips resulting from the rezoning will receive a new application date when updated information is submitted. In cases requiring project plan approval for optional method development in CBD zones, a preliminary plan will not be considered complete until a project plan application is accepted. Special exceptions permitted under CBD optional method of development need not be approved in order to consider an application complete. In cases where a site plan is submitted subject to the requirements of Article IV, Chapter 8 Montgomery County Code requiring a timely adequate public facilities determination by the Planning Board prior to the issuance of a building permit, the site plan application will not be considered complete until a local area transportation review and a traffic mitigation plan has been reviewed by the planning staff.

In certain limited cases, some requirements of the application checklist may be waived, by the Planning Board staff, for reasons of hardship or good cause, as demonstrated by the applicant prior to the scheduling of the public hearing.

#### C. Hearing Date Notice of Hearing Staff Reports -

Ten (10) calendar days prior to the public hearing on the application, the Planning Board staff shall mail notices of the date and location of the hearing. This notice shall be sent to all parties previously notified, and to all additional parties of record. Parties of record shall be anyone who communicates in writing concerning the case.

Staff reports, when prepared in advance of the hearing, will be available, upon request, to any party of record and to the public generally, at the time they are transmitted to the Board.

Written reports may not always be prepared for all cases, and in some instances a written report may not be available until the time of the hearing. (For notification under the CBD Optional Method, see attached Optional Method Rules and Procedures.)

### SECTION 3 - PRELIMINARY ACTION

Upon convening the hearing, a brief explanation of the purpose of the hearing shall be presented, together with any information or data, which has been received, before public discussion and comments begin. The case file shall be a part of the record and shall be available to the public at reasonable times.



**SECTION 4 - INFORMATION FROM THE PUBLIC**

Each speaker at a public hearing shall state: (a) name, (b) home address, and (c) person or organization he represents, or that he/she is speaking as an individual. The presiding officer may announce reasonable registration requirements for speakers.

**SECTION 5 - QUESTIONING OF OTHER WITNESSES**

The Chairman, upon request, may permit any party to ask questions of a witness at the conclusion of that witness' testimony. Questions should be limited to information presented by the witness. In other words, it is not appropriate for a person to begin his own testimony at this time, nor to question a witness on a subject not presented into the record by that witness. The Chairman may limit the number of questioners to a single representative of each side.

**SECTION 6 - TIME GUIDELINES**

The following guidelines shall serve as maximums permitted unless the Chairman in his/her discretion determines to expand or suspend any time limit. Requests to expand or suspend time guidelines should be received by the Chairman as far in advance of the public hearing as possible.

Presentation by Staff	10 minutes
Presentation by Applicant	10 minutes
Government Officials	7 minutes
Comment by other interested parties	3 minutes per person/ 5 minutes per group
Rebuttal	5 minutes
Summation (when requested)	2 minutes (In total)

**SECTION 7 - RECESS TO ANOTHER TIME AND PLACE**

Any public hearing may be recessed to a time and place, which is announced, or posted at the time and place for which notice originally has been given, and no further notice or publication shall be necessary.

**SECTION 8 - EVIDENCE**

Although not guided by formal rules of evidence, certain rules will be followed, such as:

- A. Hearsay evidence, if relevant, will normally be accepted into the record.
- B. Objections to testimony will only be sustained for the most compelling reasons so that the purpose of providing wide latitude to witnesses will be served.
- C. Objections to testimony must be made at the time the information is presented or they will be considered waived.
- D. The Board may take administrative notice of matters in common knowledge or expertise in reaching a decision on a case.

## **SECTION 9 - CLOSING THE RECORD**

Unless otherwise determined by the Board, the record will remain open until the final decision is made. Once the record is closed, no additional information will be received except for good cause shown and a showing that it is material.

## **SECTION 10 - EX PARTE COMMUNICATION**

- A. No member of the Planning Board may communicate ex parte, or outside of the record, with any person regarding the merits of a contested case. The members may, however, communicate with each other, or with legal counsel concerning legal matters.
- B. Any member of the Planning Board who receives an ex parte communication as defined in subsection (a) shall place on the record all written communications received, a memorandum stating the substance of all oral communications received and responses made and shall arrange notification to all parties of record that such communication has been filed. After the public hearing, any party desiring to rebut the ex parte communication shall be allowed to do so upon request made within five (5) days after notice of the communication.

## **SECTION 11 - RECONSIDERATION**

- A. A request to reconsider may only be made by a party of record, must be in writing, and unless waived by the Board for just cause must be received by the Planning Board within 10 days of the date of the final decision. The request must specifically state the basis upon which the requesting party believes the Board's decision should be reconsidered. The Board may review a request to reconsider, provided sufficient grounds are demonstrated. Such grounds may include:
  - (1) a clear showing that the action of the Board did not conform to relevant law or its rules of procedure; or
  - (2) evidence indicating that certain pertinent and significant information relevant to the Board's decision was not presented at the public hearing before the Board or otherwise contained in the record, together with a statement detailing why such information was not timely presented; or
  - (3) such other appropriate compelling basis as determined by the Board.

The fact that a party raises an issue worthy of reconsideration does not itself require the Board to reconsider a prior action.

- B. If a request is timely received, staff, without need for formal notice, shall present the written request for reconsideration to the Board during the next possible regular meeting of the Board. Board members may question staff or any interested party then present to clarify points raised in the written request, otherwise testimony need not be received. At such time Board members shall determine whether the

written request raises a proper and sufficient basis for reconsideration. Any Board member who:

- (1) voted in the majority on the action drawn into question; and
- (2) believes an issue warranting reconsideration has been raised, may then move to reconsider the action. If no such member remains on the Board, the motion may be made by the Chairman on his/her own initiative or at the request of any Board member.

- C. If a motion to reconsider has been duly adopted, the prior final decision shall become void. Staff will then schedule a new hearing for a subsequent date and time, providing all parties of record at least 10 days advance written notice of the new proceeding. The record shall be reopened to allow the Board the opportunity to hear further relevant testimony on any issue involving the subject application. The record of the prior hearing may be incorporated as part of the record of the subsequent public hearing.
- D. A request for reconsideration shall not operate to extend any appeals times provided by applicable law.

#### **SECTION 12 - ORDER OF PRESENTATION**

Unless otherwise determined by the Chairman, the following order of presentation shall apply in pre-preliminary plans of subdivision, preliminary plans of subdivision, and site plan review case hearing:

- A. Presentation of staff report and recommendation
- B. Public agency comments
- C. Applicant's case
- D. Opposition's case
- E. Rebuttal by applicant
- F. Summation by each side and staff

(For order of presentation for the Optional Method, see attached Optional Method Rules of Procedures.)

#### **SECTION 13 - RULES, CHANGES AND SUPPLEMENTS**

- A. Suspension of Rules -

The suspension of any rule shall require the concurrence of four (4) members of the Board. This motion is debatable, but does not permit discussion of the main question. It can neither be reconsidered, tabled, nor postponed indefinitely, and while it is pending, no motion can be made except to adjourn. A separate suspension of the rules shall be necessary for each proposition.

**B. Repeal or Amendment of Rules -**

No motion, order, or resolution to repeal or amend a rule of the Board shall be considered or acted upon unless it shall have been submitted in writing to the Board at least two (2) weeks prior thereto, together with the written text of any proposed amendment. The repeal or amendment of any rules of the Board may be by majority vote of those members present and voting.

**C. Robert's Rules of Order -**

The rules of parliamentary practice and procedure as set forth in the latest published edition of Robert's Rules of Order, as amended, shall govern the Board in all contested cases to which these Rules of Procedure apply.

## **PART 2: REQUIREMENTS**

### **A. SCOPE OF SERVICES**

#### **Introduction and Scope of Work**

The Maryland-National Capital Park and Planning Commission (Commission) is interested in engaging a Consultant (Consultant) with demonstrable experience and expertise appropriate to prescribe practical improvements in the efficiency and accountability of the development review and administrative enforcement systems in Montgomery County, Maryland (County). (General descriptions of the relevant processes are attached to this RFP as Attachment A and copies of pertinent state and local laws will be available at the Pre-Proposal Conference).

Montgomery County's development process is considered by many scholars and land use practitioners to be among the best models in the nation for regional coordination and implementing the principles of "smart growth". On the other hand, that same regulatory process has become increasingly complex as a result of combining many traditional requirements, -such as height, setback, lot coverage, and parking - with new requirements for community amenities, adequate public facilities, forest conservation standards, storm water management engineering, water and sewer infrastructure, linkages for affordable housing, and other regulatory features intended to preserve a community's overall quality of life, all within a prevailing environment of intense pressure to develop. Several of these regulatory requirements are administered by independent agencies, at separate points in a process that requires careful coordination and an integrated response. Meanwhile, many community stakeholders and civic leaders express growing dissatisfaction with the existing development process and desire to provide input and more feedback - perhaps even before the formal approval process begins.

The Consultant will undertake a comprehensive review of the existing administrative/business protocols utilized in the County's development review and enforcement approval process - accounting for each step - from the developer's initial application, through each site-specific plan or approval, and including inspection, compliance and/or enforcement mechanisms associated with the issuance of building and occupancy permits.

The Consultant's scope of work will require extensive interaction with and analysis of the integrated work programs assigned to the other state, local and independent agencies. Examples of the agencies involved in the County development approval process include the Commission, the Montgomery County (Government) Department of Permitting Service (DPS), Department of Public Works and Transportation (DPWT), Department of Housing and Community Affairs (DHCA), Historic Preservation Commission (HPC), as well as the Maryland State Highway Administration (SHA), Washington Suburban Sanitary Commission (WSSC), and other public or private utilities operating in the region.

The Consultant is expected to propose and apply whatever professional disciplines it deems necessary or advantageous in order to assess the empirical and normative performance of the County's development review process, including the compliance and enforcement phases, which follow formal development approvals. The Consultant will identify strengths and weaknesses in existing systems, and provide detailed recommendations intended to improve

the efficiency, efficacy and public accountability provided by those systems. In addition, the Consultant will propose an implementation plan for such improvements, as well as appropriate milestones for any plan recommended.

Each Offeror is expected to assemble a consulting team that may include professionals with appropriate credentials and experience appropriate to perform:

- **Regulatory Compliance Audits:** Audit the technical compliance of selected/representative "as-built" development projects with the specific terms and conditions expressed in applicable regulatory approvals.
- **Comparative Regulatory Analyses:** Compare the existing development process with examples of "best practices" deployed by other jurisdictions in the Nation.
- **Operations Engineering:** Apply proven empirical models to describe and analyze the Commission/County's existing development process and support the Consultant's recommendations for prospective performance improvements.
- **Administrative Design:** Recommend reliable internal (administrative) controls appropriate to assure the quality of, and compliance with, future development (regulatory) approvals.
- **Personnel Analyses:** Analyze and prescribe minimum educational and experience qualifications for each job classification associated with the development approval process.

The Consultant will execute an approved work program to include the following:

Phase	Description of Work	Deliverables
2.1 Analysis of Existing Development Approval Systems	Document and analyze each of the existing processes for approval of County subdivision plans based upon compilation of written and anecdotal data. Scope of analysis to include projects requiring Project Plan, Preliminary Plan, Site Plan and Record Plat approvals/opinions.	<ul style="list-style-type: none"> <li>• Detailed narrative</li> <li>• Process flow charts – with inter-agency responsibilities</li> <li>• Process PERT/CPM charts</li> <li>• Compilation of descriptive statistics to summarize appropriate performance indicia</li> </ul>
2.2 Analysis of Existing Permit and Other Regulatory Compliance ("Quality Assurance") Systems	Document and analyze each of the processes currently deployed to assure that County subdivisions comply with applicable development approvals. This analysis will be based upon compilation of written and anecdotal data.	<ul style="list-style-type: none"> <li>• Detailed narrative</li> <li>• Process flow charts – with inter-agency responsibilities</li> <li>• Process PERT/CPM charts</li> <li>• Compilation of descriptive statistics to summarize appropriate performance indicia</li> </ul>
2.3 Analysis of Existing Regulatory Enforcement Systems	Document and analyze each of the processes currently deployed to enforce applicable development approvals after issuance of a	<ul style="list-style-type: none"> <li>• Detailed narrative</li> <li>• Process flow charts – with inter-agency responsibilities</li> <li>• Process PERT/CPM</li> </ul>

Phase	Description of Work	Deliverables
	building permit. This analysis will be based upon compilation of written and anecdotal data.	<ul style="list-style-type: none"> <li>charts</li> <li>• Compilation of descriptive statistics to summarize appropriate performance indicia</li> </ul>
2.4 Analysis of Community Involvement in Development Review, Approval, Compliance and Enforcement Systems	Document and analyze the formal and informal opportunities for community input into the approval, compliance and enforcement systems. This analysis will be based upon compilation of written and anecdotal data.	<ul style="list-style-type: none"> <li>• Detailed narrative</li> <li>• Process flow charts – with inter-agency responsibilities</li> <li>• Process PERT/CPM charts</li> </ul>
2.5 Personnel Resource Analysis	Document and analyze the education, training, skill sets and experience of existing staff resources devoted to the review and approval of County development proposals	<ul style="list-style-type: none"> <li>• Detailed narrative (without identifying specific employee information)</li> <li>• Summary statistical analyses – as deemed appropriate</li> <li>• Evaluation of existing structure and practices of supervision in process</li> </ul>
2.6 Technology Resource Analysis	Document and analyze the technology resources devoted to the review, approval, compliance and enforcement of County development proposals	<ul style="list-style-type: none"> <li>• Comprehensive inventory of hardware and software technologies associated with each component of the development process</li> <li>• Identify resources appropriate for shared access or functional inter-agency integration</li> </ul>
2.7 Comparative Process Analysis	Evaluate and compare "Best Practices" for managing approval, compliance and enforcement of subdivision development regulation by comparable (regional) land use enterprises	<ul style="list-style-type: none"> <li>• Detailed narrative of existing "best practice" protocols</li> <li>• Recommendations for changes to approval process in County processes</li> <li>• Corresponding process flow charts presented in appropriate detail to depict recommended changes to existing County processes</li> <li>• Detailed justification of recommended changes to existing County processes</li> <li>• Process flow charts – with inter-agency responsibilities – to depict recommended changes to existing</li> </ul>

		<ul style="list-style-type: none"> <li>County processes</li> <li>Process PERT/CPM charts depicting recommended changes to existing County processes</li> </ul>
2.8	Comparative Community Participation Plan	Evaluate and compare "Best Practices" for incorporating community involvement in the subdivision approval process <ul style="list-style-type: none"> <li>Detailed narrative of existing "best practice" protocols for community participation and involvement</li> <li>Recommendations for changes to approval process in County processes</li> </ul>
2.9	Agency Responses	Present preliminary report for comment by appropriate County agencies <ul style="list-style-type: none"> <li>Draft project report</li> </ul>
2.10	Final Report and Plan of Implementation	Deliver final report with practical plan to implement for changes recommended by Consultant <ul style="list-style-type: none"> <li>Final Report (incorporating or addressing any agency response to draft report)</li> <li>Final recommendations</li> <li>Plan of Implementation, including enumeration of pertinent milestones</li> </ul>

Offerors are cautioned that applicants, attorneys, engineers, consultants or any other third-party currently interested a pending land use approval in Montgomery County shall be deemed ineligible to participate in any work procured under his RFP. Accordingly, any proposal including an ineligible person or entity shall be deemed non-responsive with respect to this solicitation, and any such work performed by an ineligible party as provided herein shall be deemed a material breach of the application contract appertaining to this RFP.

## B. Proposal Submission

To speed and simplify proposal evaluation, the Offeror must submit an original and six (6) copies of its proposal. Pages must be numbered and the proposal must follow the format below. All requested information must be included.

1. Offeror's Key Personnel, Experience and References—Identify the persons who will make up the contract team. Provide titles and an organizational chart. Include resumes for each proposed person, emphasizing their experience in performing studies of this nature, type and size. The key personnel proposed hereunder must possess at least five years experience with governmental business functions, particularly in the Land Use and Zoning arena, and have completed a minimum of three business process studies, which resulted in the majority of the Consultant's recommendations being implemented. Please



provide a description of the projects and contact information for reference purposes for each named person. Include the name of the proposed Project Coordinator who will represent the Offeror. Delineate experiences of the Project Coordinator as it relates to studies of this size, nature and type. Provide a resume for the Proposed Project Coordinator.

2. **Understanding of the Project and Proposed Methodology:** Describe your understanding of the objectives of the project, preferred conceptual approach, and methodology proposed to achieve those objectives. Review the major facts or features of the scope, including any conclusions, assumptions and recommendations. Provide a complete Project work plan, together with a proposed time line. At a minimum, include all the tasks described in the Scope of Work above, with details of how they are to be supported and the designation of team members proposed to complete each task.

Provide a detailed project schedule, identifying all required meetings and work session with Commission staff, all on-site activities, task durations and project milestones.

3. **Offeror's Experience and References**

Provide an outline of the firm's experience in performing services similar in nature, type and scope. This experience must include at least five years performing contracts of this type. Offeror must also supply a minimum of two references, for projects completed which were similar in scope. Include the name of the project, contact name and telephone number. The Offeror must identify the local office assigned this project.

4. **Use of Commission Resources:** Provide an outline of any Commission resource, which may be required throughout the duration of the project, such as use of Commission space, telephone, computer access, etc.
5. **Price Proposal:** Provide a lump sum price with proposed hours, and an all-inclusive hourly rate for each category of personnel assigned to the Project.
6. **MFD Participation:** This project falls under the category of Professional Services. Firms that are African American or Disabled owned and have a letter of approval from the Commission's Fair Practices Office will receive an additional evaluation preference. The evaluation preference program does not pertain to MFD participation as a subcontractor, but to prime contractors only. The letter of eligibility must be submitted with the proposal.

### C. Evaluation Criteria

- a. Key Personnel and Experience and References
- b. Methodology and Project Plan
- c. Offeror's Experience

- d. Use of Commission Resources
- e. Costs
- f. MFD participation

#### **D. Special Conditions**

##### **1. MFD Subcontracting Participation**

This procurement has significant subcontracting opportunities and, therefore, each Offeror must demonstrate compliance with the Commission's Nondiscrimination in Subcontracting Program.

MFD subcontracting participation for this procurement has been recommended at 15%.

A Nondiscrimination in Subcontracting Form must be completed and signed by an authorized person in order to be deemed responsive to this RFP. (Appendix 4C-3)

##### **2. Subcontracting or Assignment**

The proposal shall clearly indicate the proposed subcontractors to be utilized to perform the Scope of Services described herein. Once a contract has been awarded to the successful Offeror, no proposed subcontractor shall be changed, without written approval of the Commission's Contract Manager. Any proposed substitution must be with persons and/or firms of equal or comparable experience and education.

##### **3. Validity of Proposals**

All proposals submitted in response to this RFP must be valid for a minimum of 120 calendar days from the proposal due date.

##### **4. Insurance**

The successful Offeror shall comply with and keep in force throughout the Project the insurance requirements reflected in Appendix 4C-2, naming the Commission as an additional insured.

##### **5. Total Cost of the Project**

The total costs of this Project shall include all professional supervision, labor, materials, services, and indirect costs.

##### **6. Additional Work**

If the Offeror is caused extra drafting or other expenses due to changes ordered by the Commission as a result of changes of program, changes of requirements or unforeseen conditions beyond the number predicated in the Offeror's proposal or as proffered in